DRN-4569083

## The complaint

Ms S complains that NewDay Ltd acted irresponsibly in lending her three credit card accounts.

## What happened

Ms S took out three credit cards with NewDay in between September 2018 and March 2022. The limits of those accounts were varied as follows:

| Date | Aqua credit limit | Pulse credit limit | Second Aqua credit limit | Total credit offered by NewDay |
|---|---|---|---|---|
| September 2018 | £600 | | | £600 |
| July 2019 | | £900 | | £1,500 |
| January 2020 | | £1,200 | | £1,800 |
| June 2020 | | £1,800 | | £2,400 |
| 12 October 2020 | | £2,250 | | £2,850 |
| 20 October 2020 | £900 | | | £3,150 |
| November 2020 | Account closed | | | £2,250 |
| October 2021 | | £3,550 | | £3,550 |
| March 2022 | | | £900 | £4,450 |

In late 2022, Ms S complained to NewDay that it had acted irresponsibly in offering her the credit card accounts.

In its final response, NewDay said it thought it had conducted proportionate checks each time it had agreed to offer a card, or increase the credit limits. It said it carried out thorough credit checks on each occasion.  At each application, NewDay's has Ms S's annual income recorded as being £21,000.

As a goodwill gesture, NewDay offered to refund the five preceding interest charges on Ms S's Pulse card.

In early 2023, NewDay issued default notices on both accounts.

As Ms S was unhappy with NewDay's response, she referred the complaint to our service.

She said her income was actually around £17,000, derived solely from benefits as she is disabled. She explained that she also receives further benefit payments for her daughter, who is also disabled and unable to manage to her own finances, and uses those funds to pay for anything her daughter needs. Ms S explained she is struggling financially, and the stress is having a significant impact on her health.

One of our case handlers considered matters and upheld the complaint in part. He thought that NewDay had conducted proportionate checks and acted reasonably in offering the original Aqua and Amazon Pulse credit limits. But he thought that NewDay should have conducted further checks for the credit limit increases from January 2020 onwards. He thought if it had, NewDay would have found the payments for the increased limits were unsustainable given Ms S's living costs and other credit commitments. So, he thought NewDay had been irresponsible in agreeing those increases and in accepting Ms S's application for the second Aqua account in 2022.

To resolve things, our Investigator recommended NewDay rework the first Aqua and Pulse accounts as if those credit limit increases had never taken place, refunding any interest and charges. He said it should also rework the second Aqua account to refund all interest and charges.

If that meant there was a credit balance, our case handler said NewDay should add 8% simple interest. If there was still an outstanding balance for Ms S to pay, our case handler said NewDay should work with her to agree an affordable repayment plan.

Neither party responded to our Investigator's opinion, so the case was passed to me to decide.

**What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I issued a provisional decision on 21 December 2023, in which I said:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Firstly, I'd like to say how sorry I am to hear about the difficult time Ms S is having. I don't doubt how stressful things have been for her.*

*We've explained how we handle complaints about unaffordable and irresponsible lending on our website. I've used this approach to help me decide Ms S's complaint.*
*When considering each credit card application, and whether to offer each credit limit increase, NewDay needed to conduct proportionate checks to satisfy itself the debt would be sustainably affordable for Ms S. NewDay has explained that in considering each application, it relied on the information Ms S provided, the information it held about the conduct of her accounts with it, and information from external data sources – such as credit reference agencies.*

*Opening of the first Aqua credit card*

*When Ms S applied for the first Aqua credit card in 2018, the checks NewDay completed showed she had around £1,200 of unsecured debt. They found some historic adverse credit* *from almost four years prior, but as the checks showed Ms S's existing credit commitments were up to date I don't think that should have caused NewDay any cause for concern.*

*NewDay has said it also used information from credit bureaus to model Ms S's income based on Current Account Turnover (CATO), which gave an income of £21,000 a year – or around £1,750 a month. It said it used ONS data to model Ms S's expenditure on essential living expenses, which gave a figure of £800 a month. That would leave Ms S around £950 in disposal income.*

*Sustainable repayments of around 5% of the initial credit limit for the first Aqua credit card, allowing Ms S to repay the interest charged and part of the capital if the card were utilised to its limit, would be around £30. I think this was affordable for Ms S, along with her other credit commitments, given the modelled disposable income of £950.*

*I think these were proportionate checks based on the initial credit limit offered, and I think it's reasonable that NewDay considered that it would be affordable for Ms S.*

*Opening of the Pulse credit card*

*It appears NewDay used CATO and ONS data to model Ms S's income and expenditure when she applied for the Pulse credit card, giving the same information I've outlined above.*

*It also conducted external credit checks. These showed Ms S had taken out a loan with a balance of around £9,500 and she had a balance of around £200 of debt on revolving credit accounts elsewhere. The checks showed her existing credit commitments were all up to date.*

*As I've outlined above, Ms S's modelled income and expenditure indicated Ms S had around £950 in disposable income. Sustainable repayments of around 5% of the new combined limits of Ms S's NewDay accounts - £1,500 – would be around £75. This would allow her to repay the interest and reduce the capital each month, and it seems likely this would be affordable based on the information NewDay gathered.*

*I think these checks were reasonable and proportionate for NewDay to offer the £600 limit on the first Aqua credit card and £900 limit on the Pulse credit card. And I think the information NewDay found showed that this level of borrowing was sustainably affordable for Ms S, based on her other credit commitments.*

*Credit limit increase in January 2020*

*Before offering the credit limit increase in January 2020, NewDay conducted external credit checks and considered the conduct of the accounts Ms S held with it. The checks showed Ms S's existing credit commitments were well managed with no indication of financial stress.*

*In line with our case handler, I think that NewDay should have conducted further checks before offering to increase the limit of the Pulse credit card from £900 to £1,200. I think it should have verified her income and expenditure with bank statements, as it would be offering £1,800 credit overall which is significant in comparison to Ms S's income. However, I think that had it done so it would have still considered that the credit limit increase was affordable and sustainable for Ms S. I'll now explain why.*

*The Investigator thought that at that time Ms S had access to around £7,500 of revolving credit, as well as her accounts with NewDay. He considered Ms S's fixed commitments to a personal loan, and the living expenses shown on her bank statements, and thought that the new credit limit would be unaffordable for her if she utilised all the revolving credit available to her.*

*He considered Ms S's bank statements and thought they supported what she'd told us about her income being £17,000 rather than £21,000 – due to her daughter's benefit payments.*

*I accept what Ms S has said about her annual income actually being around £17,000, and that her daughter's benefits of around £4,000 a year are also paid into her bank account. This is shown in the bank statements she's provided. That said, I think that if NewDay had sight of Ms S's bank statements at the time, it likely would have considered that the benefit payments for Ms S's daughter formed part of the household income Ms S had access to. I think this would have been reasonable.*

*The checks NewDay conducted at the time found Ms S had access to £2,150 of revolving credit elsewhere with a balance of around £900. Having considered the credit file Ms S has provided, I think that information was accurate. If Ms S has any further information she'd like to provide about the amount of credit available to her or her outstanding credit balances in January 2020, I'll be happy to consider this further before reaching my final decision.*

*NewDay found her outstanding balance on her revolving credit accounts was around £900. Ms S also had a fixed payment towards her car finance £186. So, sustainable payments to all of her credit commitments – including the new limit of £1,200 – would be around £456.*

*Ms S's bank statements show net monthly income of around £1,796 – including her daughter's benefits. She'd declared monthly living expenses of £800 when she'd applied for the Pulse credit card six months prior, but our Investigator calculated her essential living expenses (on food, household bills, fuel etc) to be more like £1,050.*

*That meant that Ms S had disposable income of around £290 once her essential living costs and credit commitments – including the new credit limit – were met. On balance, I think the credit limit increase appeared to be manageable based on her household income and essential living expenses. I think it would have been reasonable for NewDay to consider it affordable and sustainable in light of the income and living expenses she had previously declared to them, and as shown on her bank statements.*

*Later credit limit increases on the first Aqua and Pulse cards*

*Prior to offering each credit limit increase, NewDay conducted external credit checks and considered the conduct of Ms S's accounts with NewDay.*

*The checks NewDay conducted prior to offering the credit limit increases in June and October 2020 and October 2021 showed that Ms S had taken out further personal loans. They also showed the balance of her revolving credit limits remained fairly low. Her accounts with NewDay were well managed – they were up to date, her payments were being made on time, and she was generally making more than the minimum repayment.*

*I think NewDay should have been prompted to ask further questions of Ms S about her income and committed expenditure prior to offering the limit increases. I say that because her fixed credit commitments changed as she'd taken out different personal loans, and given the significant increases in the amount of credit NewDay was offering to Ms S.*

*Had it done so, it would have found that her fixed payments towards loans – along with sustainable payments towards her existing revolving credit balances and the proposed new credit limits – was between around £450 and £550 on each occasion. I've considered Ms S's bank statements from March-May and August-October 2020, and her expenditure on essential living expenses remained broadly similar at around £1,050. I haven't been able to consider Ms S's bank statements from prior to the limit increase in October 2021, but I think it's likely her expenditure on day-to-day living costs remained similar. If Ms S has any further information to show her expenditure changed around these times, I'll be happy to consider this further before reaching my final decision.*

*Ms S's income and essential living expenses meant that she had disposable income of around £700. As I've explained above, payments towards Ms S's existing credit commitments and the new proposed limits of her NewDay accounts would be between £450 and £550. So I think the new proposed limits were affordable and sustainable for her on each occasion.*

*Overall, on balance, I think that if NewDay had conducted proportionate checks on each occasion, it would have considered each of the limit increases to be affordable and sustainable for her. For the reasons I've explained, I am not upholding Ms S's complaints about the first Aqua or Pulse credit cards.*

*Second Aqua card opening – March 2022*

*The application data NewDay has provided shows that Ms S's unsecured credit balance had escalated to £18,100. The data it held about her due to her existing account showed she had around £15,400 in non-revolving credit (such as personal loans), and her revolving credit balance was around £3,100.*

*The application data NewDay holds for the second Aqua card gives Ms S's income as £21,000, and her monthly living expenses were £0. It's unclear whether this was information provided by Ms S, or obtained from credit reference agencies. Given the level of credit balances shown, and the information NewDay held, I think it should have been apparent that the figure for Ms S's living expenses was incorrect. And I think NewDay should have been prompted to ask Ms S about her committed expenditure. Had it done so, it would have found that her monthly payments towards four loan accounts were around £580.*

*With the new Aqua card opening, Ms S's full available credit with NewDay would be £4,450. And she had balances of around £3,100 on revolving credit accounts elsewhere. So, if she used the NewDay accounts up to their limit, she would have a total revolving credit of £7,550. Sustainable repayments of around 5% of that amount – allowing Ms S to repay the interest, and reduce the capital to repay the debt within a reasonable period, would be around £353.*

*That means that to sustainably repay all of her credit commitments, Ms S would need to pay £933 per month – over half her income of £1,796. I think it's unlikely Ms S's day-to-day living expenses of around £1,050 had reduced. That would mean that to manage her living expenses, along with making sustainable repayments to her credit commitments, Ms S would need £1,983 – more than her income of £1,796.*

*I think it should have been apparent to NewDay that Ms S's credit commitments had been steadily increasing for some time, and that further credit commitments wouldn't have been sustainably affordable for her. Accordingly, I don't think NewDay acted fairly and reasonably by accepting the application.*

*For the reasons I've explained, I am upholding Ms S's complaint about the second Aqua* *card.*

***My provisional decision***

*My provisional decision is to uphold this complaint in part. To put things right, NewDay should:*

- *Rework the second Aqua credit card account taken out in March 2022, removing all interest and charges.*
- *If the reworks result in a credit balance, this should be refunded to Ms S along with 8% simple interest per year* calculated form the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding the Aqua credit card taken out in March 2022 from Ms S's credit file.*
- *Or, if the after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Ms S for the remaining amount. Once Ms S has cleared the outstanding balance, any adverse information recorded in relation to the accounts should be removed from her credit file.*
- *NewDay should also liaise with Ms S to reach an affordable payment arrangement for the outstanding balance on the Pulse credit card.*

**HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Ms S a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax."*

Neither party responded to my provisional decision by the deadline. So, having reviewed the full file again, I see no reason to depart from my provisional findings.

For these reasons, I am upholding Ms S's in part complaint.

**Putting things right**

To put things right, NewDay should:

- Rework the second Aqua credit card account taken out in March 2022, removing all interest and charges.
- If the reworks result in a credit balance, this should be refunded to Ms S along with 8% simple interest per year* calculated form the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding the Aqua credit card taken out in March 2022 from Ms S's credit file.
- Or, if the after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Ms S for the remaining amount. Once Ms S has cleared the outstanding balance, any adverse information recorded in relation to the accounts should be removed from her credit file.
- NewDay should also liaise with Ms S to reach an affordable payment arrangement for the outstanding balance on the Pulse credit card.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give Ms S a certificate showing how much tax has been taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax."

## My final decision

My final decision is that I uphold Ms S's case in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 19 February 2024.

Frances Young
**Ombudsman**